

Department of Permits and Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204
Baltimore County, Maryland

In the Matter of

Civil Citation No. 69499

Ernest A. Lucas
Donna M. Lucas

7313 Longfield Drive

Respondents

FINDINGS OF FACT AND CONCLUSIONS OF LAW
FINAL ORDER OF THE CODE ENFORCEMENT HEARING OFFICER

This matter came before the Baltimore County Code Enforcement Hearing Officer on July 20, 2010 for a Hearing on citations for: 1) violations under the Baltimore County Zoning Regulations (BCZR) sections 101, 102.1, 1A04, 431, failure to cease storage of commercial vehicle on residential property; 2) violations under BCZR sections 101, 102.2, 428, and Zoning Commissioners Policy Manual (ZCPM), failure to cease outside storage of unlicensed vehicles, failure to cease service garage activity, failure to cease illegal home occupation on residential property zoned RC 5 known as 7313 Longfield Drive, 21087.

On June 24, 2010, pursuant to § 3-6-205, Baltimore County Code, Inspector Keith Parker issued Code Enforcement & Inspections Citations. The citations were sent to the Respondent by 1st class mail to the last known address listed in the Maryland State Tax Assessment files.

The citation issued June 24, 2010 proposed a civil penalty of \$1,000.00 (one thousand dollars).

The citation issued July 12, 2010 proposed a civil penalty of \$1,000.00 (one thousand dollars).

The following persons appeared for the Hearing and testified: Ernest and Donna Lucas, Respondents, represented by Steve Freeman, Esquire and, Keith Parker, Baltimore County Code Enforcement Officer.

After proper consideration of all the evidence presented, the Hearing Officer finds:

A. A Correction Notice was issued on June 24, 2010 for removal of untagged/inoperative motor vehicles, cease service garage activities, illegal home occupation. These Citations were issued on June 24, 2010 and July 12, 2010. The June 24, 2010 Citation was issued without prior Correction Notice pursuant to the Department's adopted criteria, to a property owner who has consistently violated the same code within the year or consecutive years. BCC Section 3-6-205.

B. Inspector Keith Parker testified that the County's notices were issued because untagged vehicles and a rollback tow truck were observed at this residential property. Photographs in the file show multiple vehicles without license plates parked in the driveway on June 24, 2010, June 28, 2010, June 29, 2010, July 1, 2010 and July 12, 2010. Photographs show at least one vehicle with visible collision damage, on June 29, 2010. Inspector Parker obtained Motor Vehicle Administration reports on the vehicles and found various owners listed. He testified that when he looked into each vehicle to obtain the Vehicle Information Number (VIN), he did not see any license plates or dealer tags. Respondents were not listed on the MVA reports as owners of the vehicles. Photographs also show a small red rollback tow truck parked in the driveway. Inspector Parker testified that on June 24, 2010 he observed a man in the garage doing something to a vehicle, and that the man said he was putting a window tint on the car windshield. Inspector Parker further testified that when he re-inspected on July 19, 2010, prior to this Hearing, he found no untagged vehicles and no commercial vehicle at the property.

C. Respondent Ernest Lucas testified that he has lived on the property with his wife for 15 years. He operates two businesses. One business is a automotive repair facility in Harford County. The second business is that he is a car dealer in Delaware, operating Fleetwood Auto Sales, with a partner. He has been in the business of buying and selling cars for 30 years. He obtains dealer tags and temporary 2 month tags for cars, and has six dealer tags. He testified that he doesn't put the dealer tags on the cars while they are parked because they are frequently stolen, but that they are usually in the vehicle. He has the cars at his house while someone is coming to get them; his employees drive them using the dealer plates.

D. Respondent Ernest Lucas testified that the small rollback tow truck is his personal vehicle and he drives it regularly and does not use it to bring vehicles to his house. He testified that the truck is registered with MVA as being less than 10,000 lbs., and provided the MVA Registration Certificate which shows gross vehicle weight as 7000 lbs. He testified that there is no advertising or lettering on the truck except on the door. He testified that there is a winch on the back of the truck, attached to the vehicle, and that there is no equipment on the truck. Inspector Parker testified that he has always considered a winch on a truck to constitute "equipment" for purposes of BCZR Section 431.1.

E. Respondent Ernest Lucas testified that the damaged car observed at the property on June 29, 2010 belonged to his son's girlfriend. She had an accident and they brought the wrecked car to his house, and he told them to take it away immediately. He testified that he never has damaged cars or cars needing repairs on the property. He testified that the man in the garage observed by Inspector Parker had come to put tinting on a couple of his neighbors' vehicles. Inspector Parker testified that the damaged car was at the property for three days that he observed.

F. The evidence presented shows that Respondent has been parking vehicles on his residential property without valid tags or license plates. County zoning regulations prohibit the outside storage of inoperative motor vehicles on a residential lot. BCZR Section 428.1(A). The outside storage of unlicensed motor vehicles is also prohibited, except for one vehicle per dwelling unit for a period not exceeding 15 days in any calendar year. Section 428.1(B). Respondent has exceeded this limitation. Respondent may not park inoperative or unlicensed vehicles on the property; valid tags must be displayed either on the vehicle or in view through the window.

G. The evidence presented does not show that Respondent has improperly parked a commercial vehicle on the property in violation of BCZR Section 431.1. That regulation permits the parking of a commercial vehicle that does not exceed 10,000 pounds gross vehicle weight for a period exceeding the time essential to the immediate use of the vehicle, if the owner or operator resides on the residential lot and if no materials, products, freight or equipment is visible, if the vehicle displays no advertising other than lettering, figures or designs on the driver's door or front seat passenger's door, and if the vehicle is parked in a side or rear yard. Here, the truck is registered at 7,000 lbs GVW, and

meets the other requirements. The question of “equipment” on the truck is problematic. The photographs in the file show a small flatbed truck, and testimony stated that there is a winch on the truck. However, there does not appear to be a large towing frame or other noticeable equipment on the truck. The purpose of this zoning restriction is to prevent property owners from parking unsightly or intrusive commercial vehicles in residential zones, and based on the photographs and testimony presented in this Hearing, permitting this small truck to be parked at the side or rear of the house does not violate the letter or the purpose of the zoning regulation.

H. The evidence does show, however, that Respondent has improperly used this residential property as a staging area for his car sales business. Bringing vehicles to the property for staff or purchasers to pick up, as he testified, is part of the business activity and is not permitted on this residential property. This property is zoned R.C. 5 (Rural-Residential). The Baltimore County Code and Baltimore County Zoning Regulations significantly restrict the non-residential uses of properties in R.C. zones. BCZR Section 102.1 (“No land shall be used or occupied and no building or structure shall be erected, altered, located or used except in conformity with these regulations....”); BCC Article 32, Title 3 (Planning, Zoning and Subdivision Control; Zoning); BCZR Article 1A. Resource Conservation Zones; BCZR Section 1A04 (R.C. 5 Use regulations). The zoning regulations do not permit use of residential property in an R.C. 5 Zone for a service garage operation, including staging vehicles for pickup or delivery as part of a car sales business. This Citation will be enforced.

I. Respondents testified that they will comply with County zoning regulations. Because compliance is the goal of code enforcement, the civil penalty will be rescinded if re-inspection finds the violations corrected, with no vehicles being brought to the property for staging or convenience as part of Respondent's vehicle sales business.

IT IS ORDERED by the Code Enforcement Hearing Officer that a civil penalty be imposed in the amount of \$500.00 (five hundred dollars).

IT IS FURTHER ORDERED that the civil penalty will be RESCINDED and reduced to zero dollars if re-inspection finds the violation has been corrected.

IT IS FURTHER ORDERED that if not paid within thirty days of billing, the civil penalty, as authorized above, shall be imposed and placed as a lien upon the property.

IT IS FURTHER ORDERED that the County inspect the property to determine whether the violations have been corrected.

ORDERED this 11th day of August 2010

Signed: ORIGINAL SIGNED
Margaret Z. Ferguson
Baltimore County Hearing Officer

NOTICE TO RESPONDENT: The Respondent is advised that (1) pursuant to §3-6-206(g)(2) of the Baltimore County Code, the Respondent may make written application to the Director of the Department of Permits & Development Management within 10 days to modify or amend this order and (2) pursuant to §3-6-301(a), Baltimore County Code, the Respondent may appeal this order to the Baltimore County Board of Appeals within fifteen (15) days from the date of this order; any such appeal requires the filing of a petition setting forth the grounds for appeal, payment of a filing fee of \$150 and the posting of security to satisfy the penalty assessed.